

CITY OF ALAMO HEIGHTS
CITY COUNCIL
December 8, 2008

A regular meeting of the City Council of the City of Alamo Heights, Texas was held at the Council Chambers, 6120 Broadway, at 5:30 p.m. on Monday, December 8, 2008.

Present and composing a quorum were:

Mayor Louis Cooper
Mayor Pro-Tempore Jill Souter
Councilman Stan McCormick
Councilman Bobby Rosenthal
Councilman Bill Kiel
Councilwoman Susan Harwell

Also attending was:

City Manager Rebecca Waldman
City Attorney Mike Brenan
Assistant City Manager/Public Works Director Shawn P. Eddy
Assistant to City Manager/Information Technology Manager Marian Ramirez
Finance Director Cynthia Barr
Community Development Director Ann McGlone
Human Resource Manager/Deputy City Secretary Judith E. Surratt
City Secretary Jennifer Reyna
Fire Chief Bill Hagendorf
Police Chief Rick Pruitt

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Mayor Louis Cooper called the meeting to order at 5:33 p.m.

Mayor Cooper thanked HEB Lincoln Heights Store for continually supporting Alamo Heights. HEB Lincoln Heights Store provided a holiday cake.

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Mayor Cooper asked City Council for any corrections to the minutes of the November 10, 2008, City Council Meeting and the November 12, 2008 Special Council Meeting. A motion was made by Councilman Stan McCormick to approve the minutes of both meetings. The motion was seconded by Councilman Bobby Rosenthal and passed by unanimous vote.

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Item # 2 City Manager's Report

- a. Alamo Heights Comprehensive Plan Update and Design Workshop
scheduled for January 17, 2009**

Community Development Director Ann McGlone stated that the City has completed the first round of Comprehensive Plan Neighborhood Meetings. She invited the public to attend the upcoming workshop that is scheduled for Saturday morning, January 17, 2009 at the Alamo Heights High School.

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Citizens To Be Heard Concerning Non-Agenda Items]

Margaret Houston, 140 Patterson, provided an update on the Angel Acuna Benefit fund. She expressed her desire to continue the holiday meals for the Firemen and the Policemen that serve the citizens. She wished everyone a happy holiday.

Lisa Price, 207 Alta, stated that the neighborhood's children are not safe due to an enormous increase in traffic. Ms. Price submitted a petition for a stop sign at Alta Avenue and Columbine Street. She is also concerned with the coyotes in the neighborhood.

Carolina Morell, 211 Alta, expressed concern about the increase of traffic between Alta Avenue and Corona Street. She requested a stop sign at the intersection of Alta Avenue and Columbine Street.

Sarah Reveley, 436 Corona, stated that she spoke to a representative at the U.S. Department of Agriculture and the Texas Wildlife Department and there is a plan to be followed regarding coyotes.

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Staff Reports

Item # 3 Briefing by CPS Energy on the status of pilot project to determine PCB content in electrical transformers in Alamo Heights

Ricardo Lopez, Director of Distribution Engineering, CPS Energy, provided a presentation announcing the replacement of 85 transformers over the next 12 months that are suspected to contain trace levels of PCB content due to cross contamination.

Councilwoman Harwell inquired about cross contamination. Mr. Lopez confirmed that there was contamination due to using the same equipment to fill a PCB transformer and a non-PCB transformer.

Councilman Rosenthal complimented CPS Energy on the initiation of this study and their presentation. Councilman Kiel reiterated that CPS Energy is addressing this and being proactive.

Sarah Reveley, 436 Corona, shared her experience with a transformer located at her residence. Ms. Reveley asked CPS Energy to look into the age of the transformers. Ms. Reveley commented that citizens needed to be educated on how to identify old transformers. She received information that the leaking transformer could possibility

destroy her trees and landscaping. Ms. Reveley agreed on the methodology and approach that CPS Energy was recommending.

Councilwoman Harwell added that this item was favorably recommended by the Infrastructure and Services Committee. Councilwoman Harwell suggested CPS Energy consider utilizing computer software to maintain the project information. Councilwoman Harwell thanked the CPS Energy staff for their efforts.

Councilman McCormick stated that now there is public awareness of this issue.

Item # 4 **Briefing on proposed solid waste service improvements and regulation of commercial solid waste operations**

Mr. Eddy provided a presentation outlining the proposed expansion of recycling services to residents that are not City customers, issuance of 96-gallon containers to non-residential customers, the issuance of 96-gallon containers to multi-family customers on a voluntary basis, the registration of commercial solid waste providers and the establishment of authorized hours for the provision of commercial solid waste services.

Councilman McCormick asked if the proposed container will be a benefit for the multi-family owner. Mr. Eddy confirmed that the large 96-gallon containers are larger and that the program will provide an opportunity for multi-family residents to pay less for solid waste service by sharing the larger containers.

Councilman Rosenthal asked how new condos are categorized. Mr. Eddy stated that condos are categorized as a multi-family. Mr. Eddy also stated that many new condos have garages and do not have a shared site for solid waste containers.

Margaret Houston, 140 Patterson, stated how HEB specifically rerouted a garbage pickup routine at the residents' request. Councilwoman Harwell confirmed that this is a concern and that City Council is requesting the input of the citizens.

Mr. Eddy suggested that consideration needs to be given to both the commercial and residential needs. There was a discussion among the councilmembers regarding proposed hours of garbage pick up.

John Joseph, 206 Joliet, asked if duplexes may be excluded from the new program. Councilman Kiel stated that this is voluntary. Mr. Eddy agreed.

Mr. Eddy added that this program will reduce the number of injuries to staff through the use of automatic arms on the trucks which will be able to lift the 96-gallon containers. Mayor Pro Tem Souter inquired if any of the multi-family or commercial sites are serviced in alleys. Mr. Eddy stated that if the trucks are unable to maneuver, it will be serviced by City staff.

Mr. Eddy asked if City Council concurred that 7:00 a.m. -10:00 p.m. are the proposed authorized hours for commercial (dumpster) solid waste services. Mayor Cooper concurred and asked Mr. Eddy to proceed with notification.

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Consent Items

Councilwoman Harwell requested to pull Item # 5 from consent agenda for discussion and individual consideration. Item # 6 was addressed.

Item # 6 Mayor Cooper read the following caption.

CONSIDERATION OF A REQUEST BY DELTA SOCIETY OF SAN ANTONIO TO HOLD ITS "2009 FIESTA POOCH PARADE" ON APRIL 25, 2009, FROM 8:30 A.M. UNTIL NOON TO BEGIN AND END AT THE ALAMO HEIGHTS SWIMMING POOL

A motion for approval was made by Mayor Pro Tem Souter. The motion was seconded by Councilman McCormick and passed by unanimous vote.

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Items for Individual Consideration.

Item # 5 Mayor Cooper read the following caption.

ORDINANCE NO. 1800

AN ORDINANCE AMENDING CHAPTER 2 ADMINISTRATION ARTICLE II CITY OFFICIALS OF THE CODE OF ORDINANCES TO UPDATE CITY OFFICIAL POSITIONS AND DEPARTMENTS TO BE CONSISTENT WITH THE CITY CHARTER, OPERATING BUDGET AND CURRENT STAFFING

This item was pulled by Councilwoman Harwell to be considered under individual consideration. This item followed Item # 6. Councilwoman Harwell asked if this action is consistent with the City Charter.

Margaret Houston, 140 Patterson, also requested clarification on the proposed change.

City Attorney Mike Brennan addressed Councilwoman Harwell and Ms. Houston's questions. Mr. Brennan mentioned that this approval was necessary to update the Code of Ordinances to be consistent with the City Charter.

A motion for approval was made by Councilman Rosenthal. The motion was seconded by Mayor Pro Tem Souter and passed by unanimous vote.

Item # 7 Mayor Cooper read the following caption.

ORDINANCE NO. 1801

**AN ORDINANCE APPROVING AND AUTHORIZING THE
CITY MANAGER TO NEGOTIATE AND EXECUTE A
CONTRACT WITH LAKE/FLATO ARCHITECTS TO
PROVIDE FACILITY DESIGN SERVICES**

Assistant City Manager/Public Works Director Shawn Eddy briefly discussed the requirements to acquire an architect. Mr. Eddy introduced Ted Flato, a resident of the community and Principal for Lake/Flato Architects, a national recognized firm. Mayor Cooper complimented Lake/Flato Architects on their great experience.

Councilwoman Harwell expressed gratitude for all the firms that submitted qualifications for this project and appreciated the input of the citizens. She also stated her appreciation for the City staff and the Facilities Committee's hard work.

Councilman Kiel commented on the difficult constraints that the site presents. He expressed that this project needed creativity and flexibility to produce functionality for city services.

Mayor Pro Tem Souter, member of the Facilities Committee, stated that this decision was a difficult one. She thanked Mr. Flato for their professionalism and for negotiating with the City of Alamo Heights. She also thanked City Manager Rebecca Waldman; Assistant City Manager/Public Works Director Shawn Eddy and Community Development Director Ann McGlone for their time.

Councilman McCormick inquired if Mr. Flato had had good experiences working with a project manager and Mr. Flato responded that he had.

John Joseph, 206 Joliet, President of the Alamo Heights Neighborhood Association (AHNA), along with Lucien Bolduc, 201 Primrose Place; and Mr. and Mrs. Martin Theurer, 139 Wildrose Avenue, of the Board of Directors, had questions on the fee negotiation. Mr. Joseph stated that the Neighborhood Association voted to support the establishment of a new city hall. Mr. Joseph said the AHNA had toured city hall and agreed that the necessity for a new city hall was long overdue. Mr. Joseph expressed concern regarding what AHNA perceived as high architectural fees.

Margaret Houston, 140 Patterson, inquired on the designated area for the new city hall. Councilman Kiel commented that a final decision has not yet been made.

Mayor Pro Tem Souter referenced the fees for architects and other professional fees. She stated that this project will be difficult and that the fees are reasonable. Mayor Pro Tem Souter stated that these fees are aligned with other cities. Mayor Pro Tem Souter encouraged not using high maintenance materials for the facilities.

A motion for approval was made by Mayor Pro Tem Souter. The motion was seconded by Councilwoman Harwell and passed by unanimous vote.

Item # 8 Mayor Cooper read the following caption.

Consideration of a request for a partial demolition for 536 Castano Avenue by James Jr. and Mary Williams, owners, represented by James Rahe, Sage Architecture, Inc., to demolish the existing one-story single car garage for the purpose of constructing a future swimming pool and patio on a property zoned Single Family A – Ann McGlone, Community Development Director

Community Development Director Ann McGlone made a PowerPoint presentation on the request for a partial demolition of a single car garage located at 536 Castano Avenue. This was presented to the Neighborhood Character and Commercial Revitalization and favorably reviewed.

James Rahe of Sage Architecture represented the owners, James Jr. and Mary Williams. Mr. Rahe apologized on behalf of the Williams that they were not able to be present.

Councilman Kiel inquired about the location of the swimming pool. Mr. Rahe confirmed that the map did display the location of the swimming pool accurately if the demolition was granted. Councilman Kiel asked if there were any variances needed for the existing request. Mr. Rahe confirmed that no variances are needed.

Councilwoman Harwell asked Mr. Rahe, if the location changed, would his clients come back to ask for a variance. Mr. Rahe confirmed that his clients would come back to the city to coordinate appropriately. Councilwoman Harwell inquired if the existing driveway and the proposed driveway would connect. Mr. Rahe confirmed, yes, the driveways would connect, no changes being made.

A motion for approval was made by Councilwoman Harwell. The motion was seconded by Councilman Kiel and passed by unanimous vote.

Item # 9 Mayor Cooper read the following caption.

ORDINANCE NO. 1802

AN ORDINANCE TO GRANT A LICENSE TO ENCROACH FOR A PERIOD OF 5 YEARS ON THE CITY RIGHT-OF-WAY AT 308 KENNEDY SUBMITTED BY PHILIP BAKKE, FOR THE PURPOSE OF ENCLOSING AN AREA OF 1,760 SQ. FT. ALONG BRONSON AVE. WITH A 6 FT. CMU/STUCCO AND WROUGHT IRON FENCE AND ENCLOSING AN AREA OF 84 SQ. FT. ALONG CAMBRIDGE OVAL WITH A 4 FT. CMU/STUCCO FENCE ON A PROPERTY ZONED SINGLE FAMILY-A

Community Development Director Ann McGlone made a PowerPoint presentation on the request of a license to encroach.

Owner, Philip Bakke, answered questions from the councilmembers.

Mayor Pro Tem Souter asked about the process to track this license. Ms. McGlone replied that this is part of the Contracts Management System and that the license will also be recorded with the County.

Mr. Bakke questioned the council regarding the 5-year application renewal and desired more of a permanent solution. Councilman McCormick stated that it is part of the Code of Ordinances. City Attorney Mike Brennan confirmed this is the first significant project related to the ordinance.

A motion for approval was made by Councilwoman Harwell. The motion was seconded by Councilman Rosenthal and passed by unanimous vote.

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At 8:05 p.m., Mayor Cooper announced that the City Council would conduct a closed meeting with its attorney to seek advice regarding pending litigation, *Pace v. City of Alamo Heights*, as authorized in Section 551.071 of the Texas Government Code.

Ken Brown, Attorney for Vernon and Kathy Friesenhahn, asked to speak to the City Council prior to the closed meeting. He spoke regarding the pending litigation. He expressed on behalf of his clients that the Board of Adjustment correctly upheld the City's ordinances thereby denying any variances. Mr. Brown stated that the Friesenhahns are directly impacted by this issue.

At 8:09 p.m., Mayor Cooper adjourned the regular City Council meeting to conduct a closed meeting with its attorney to seek advice regarding pending litigation, *Pace v. City of Alamo Heights*, as authorized in Section 551.071 of the Texas Government Code.

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Mayor Cooper reconvened the regular meeting at 9:37 p.m. There was no action taken during the closed session.

Action Item

Item #11 **The City Council may take any action it deems in the public interest concerning pending litigation, *Pace v. City of Alamo Heights***

Frank Burney, Attorney for Paul and Peggy Pace, spoke on the unpleasant experience it has been for his clients. Mr. Burney stated a variance was needed and there was a petition submitted that supported the variance on this issue.

Ken Brown, Attorney for Vernon and Kathy Friesenhahn, stated that it is not appropriate for the City Council of Alamo Heights to settle this pending lawsuit at this level. Mr. Brown informed the City Council that the District Court should determine the outcome of the lawsuit.

Mr. Burney noted that Mr. Brown's clients are not involved in the lawsuit and would like to seek grounds for settlement.

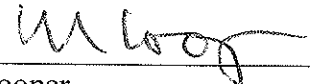
A motion was made by Mayor Pro Tem Souter to settle the pending lawsuit upon the following terms:

1. The Paces will dismiss, with prejudice, the lawsuit.
2. The Paces will waive all claims for damages that were or could have been asserted in the lawsuit.
3. The City of Alamo Heights waives all claims and counterclaims (whether mandatory or permissive) against the Paces that were or could have been asserted in the lawsuit unless otherwise required by a court order.
4. The City of Alamo Heights approves the permitted pool project in the location presently constructed subject to the following modifications:
 - a. The existing four foot (4') tall stone retaining wall shall be extended along Torcido Drive.
 - b. A swimming pool wall approximately seven foot six inches (7'6") tall will be constructed.
 - c. A four foot (4') tall wrought iron perimeter fence shall be constructed.
 - d. The waterfall feature of the pool shall be shortened in height to approximately twelve inches (12"). Water shall pour into a re-circulating channel built into an extension of the existing retaining wall. This modification will result in the elimination of the previously proposed lower catch basin, which will move the edge of the pool approximately three feet (3') farther away from the Torcido property line.
 - e. Substantial additional landscaping that limits the view of the pool from the street and reduces the noise from the pool audible from the street shall be installed.
5. No additional permits, approvals, plan reviews or fees shall be required by the City of Alamo Heights or the Board of Adjustment to complete the pool and related improvements as specified hereinabove.
6. The City Manager is authorized to execute a Release and Settlement Agreement pertaining to the lawsuit which includes the above requirements.

City Attorney Mike Brennan asked Mr. Burney whether the lawsuit would be dismissed if the motion passed. Mr. Burney responded in the affirmative. The motion was seconded by Councilman Kiel and passed by unanimous vote.

A motion was made by Councilman McCormick to adjourn the meeting. The motion was seconded by Councilwoman Harwell and passed by unanimous vote. Mayor Cooper adjourned the meeting at 9:49 p.m.


Jennifer Reyna, TRMC
City Secretary


Louis Cooper
Mayor